

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA  
and the STATE OF WISCONSIN

Plaintiffs,

v.

P. H. GLATFELTER COMPANY  
and  
WTM I COMPANY  
(f/k/a Wisconsin Tissue Mills Inc.),

Defendants.

CIVIL ACTION NO. 03-C-0949

The Honorable Lynn Adelman

**UNITED STATES’  
UNOPPOSED MOTION TO ENTER AMENDED CONSENT DECREE**

The United States of America (the “United States”) hereby files this unopposed motion to enter the Amended Consent Decree that was lodged with this Court on June 20, 2008. The Amended Consent Decree concerns polychlorinated biphenyl (“PCB”) contamination in the portion of the Lower Fox River and Green Bay Site (the “Site”) that has been designated as Operable Unit 1 (Little Lake Butte des Morts).

In this case and several related cases, this Court has considered and approved other partial settlements relating to Site, and has issued opinions granting entry of Consent Decrees in three instances where there were substantive public comments on the proposed settlements.<sup>1</sup>

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<sup>1</sup> See United States v. P.H. Glatfelter Co., No. 03-C-0949 (E.D. Wis. Apr. 12, 2004); United States v. Fort James Operating Co., 313 F. Supp. 2d 902 (E.D. Wis. 2004); United States v. NCR Corp., No. 06-C-0484 (E.D. Wis. Nov. 3, 2006).

The U.S. Department of Justice solicited public comment on the pending proposed Amended Consent Decree in this case, but no substantive comments were received. The United States, the State of Wisconsin, and the Defendants all support entry of the Consent Decree, and the United States is therefore moving that the Court approve the Amended Consent Decree without delay, by entry of the accompanying proposed “Order Entering Amended Consent Decree.”

1. Although this case was concluded by the Court’s entry of an earlier Consent Decree on April 12, 2004, the Court has rightly recognized that it has continuing jurisdiction over this matter for the purpose of modifying or enforcing that Decree. See United States v. P.H. Glatfelter Co., No. 03-C-949, 2008 WL 419901 (E.D. Wis. Feb. 13, 2008). The United States seeks the Court’s approval and entry of the Amended Consent Decree pursuant to that retention of jurisdiction.

2. On October 1, 2003, the Plaintiffs filed a Complaint in this action pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9606 and 9607. The Complaint alleged that Defendants P.H. Glatfelter Company and WTM I Company (the “Defendants”) are parties liable under CERCLA for certain cleanup-related response costs incurred for response activities undertaken in response to the release and threatened release of hazardous substances from facilities at and near Operable Unit 1. The United States also sought injunctive relief under CERCLA requiring the Defendants to abate conditions at Operable Unit 1 that may present an imminent and substantial endangerment to the public health or welfare or the environment because of actual or threatened releases of hazardous substances into the environment at and from Operable Unit 1.

3. The original Consent Decree required the Defendants to implement the cleanup remedy for Operable Unit 1 that was selected in a December 2002 Record of Decision issued jointly by the U.S. Environmental Protection Agency (“EPA”) and the Wisconsin Department of Natural Resources (“WDNR”). That Decree provided that the Defendants would pay for performance of that work using a specially-dedicated \$60 million fund established by the companies, plus interest earned on the money placed in that fund. In light of that limited funding commitment, the Decree included corresponding “cost reopener” provisions that allowed termination of the Decree (with reservations of rights) if the actual costs of the work exceeded that funding commitment. The settlement did not resolve the Defendants’ liability for response activities or response costs relating to areas of the Site other than Operable Unit 1.

4. Remedial dredging work in Operable Unit 1 began under the Consent Decree in 2004. Between 2004 and 2007, approximately 335,000 cubic yards of PCB-contaminated sediment was dredged from Operable Unit 1 and disposed of in an off-site commercial landfill.

5. The Amended Consent Decree would eliminate the “cost reopener” provisions of the original Decree and it would require the Defendants to complete the Operable Unit 1 cleanup without any pre-defined funding limitation. The Amended Decree also would accommodate adjustments to the Operable Unit 1 remedy that are reflected in a Record of Decision Amendment that EPA and WDNR issued in June 2008. The work under the original Decree and the proposed Amended Decree is expected to cost approximately \$102 million. Like the original Decree, the Amended Decree would not resolve the Defendants’ liability for additional cleanup work that will be required elsewhere at the Site.

6. In accordance with CERCLA Section 122(d)(2), 42 U.S.C. § 9622(d)(2), the

United States published notice of the lodging of the proposed Amended Consent Decree in the Federal Register on June 30, 2008, which commenced a thirty (30)-day public comment period. 73 Fed. Reg. 36,900 (June 30, 2008). The United States received no substantive comments on the Decree during the public comment period.<sup>2</sup>

7. Like the original Consent Decree in this case, the Amended Consent Decree should be approved because it is fair, reasonable, and consistent with the purposes of CERCLA. See United States v. P.H. Glatfelter Co., No. 03-C-0949, slip op. at 4-5 (E.D. Wis. Apr. 12, 2004). It is the product of intense arms-length negotiations that stretched over more than ten months in late 2007 and early 2008. It would ensure the completion of the selected remedy for Operable Unit 1. It would require the Defendants to fund that cleanup work, thereby imposing accountability on responsible parties who are deemed liable under CERCLA. Finally, the Amended Decree is consistent with CERCLA's strong preference for settlement, and it would ensure that resources are devoted to cleanup rather than wasteful litigation. See id. at 5.

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<sup>2</sup> The U.S. Department of Justice did receive one electronic mail message about a delay in posting a copy of the Amended Consent Decree on the Justice Department's website. That problem was quickly remedied and a complete copy of the Amended Decree was sent to the individual by a reply e-mail on July 2, 2008, as reflected by the copy of the e-mail exchange that is attached hereto at Tab A. The individual subsequently submitted no comments on the Amended Decree itself.

## **CONCLUSION**

For the foregoing reasons, the Court should approve and enter the Amended Consent Decree by entry of the accompanying proposed "Order Entering Amended Consent Decree."

Respectfully submitted,

For the United States of America

RONALD J. TENPAS  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice

Dated: August 5, 2008

s/ *Randall M. Stone*  
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Tab A

**Stone, Randall (ENRD)**

**From:** Fleetwood, Tonia (ENRD)  
**Sent:** Wednesday, July 02, 2008 1:49 PM  
**To:** Bk1492@aol.com  
**Subject:** RE: public comment on federal register notice below in a polluter settlement  
**Attachments:** P.H. Glatfelter CD Amendment.pdf

Attached please find copy of the P. H. Glatfelter consent decree published in the Federal Register on 6/30, and posted late on 7/1/08 due to processing procedure. Thank you

**From:** Bk1492@aol.com [mailto:Bk1492@aol.com]  
**Sent:** Monday, June 30, 2008 7:49 AM  
**To:** Fleetwood, Tonia (ENRD); member@citizen.org; media@cagw.org; americanvoices@mail.house.gov; comments@whitehouse.gov; info@taxpayer.net; today@nbc.com; wnn@abcnews.com  
**Subject:** public comment on federal register notice below in a polluter settlement

the full agreement should be part of this posting. it is unfair to not allow taxpayers/citizens of this country not to see what the settlement is without travelling to wisconsin to see it. why isnt the internet proposal posted in full. this is discriminatory to taxpayer/citizens.

b. schau  
 15 elm st

florham park nj07932

\[Federal Register: June 30, 2008 (Volume 73, Number 126)][Notices] [Page 36900]From the Federal Register Online  
 via GPO Access [wais.access.gpo.gov][DOCID:fr30jn08-113]

---DEPARTMENT OF JUSTICE Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act Pursuant to 42 U.S.C. 9622(d)(2) and 28 CFR 50.7, notice is hereby given that, on June 20, 2008, a proposed Amended Consent Decree in United States and the State of Wisconsin v. P.H. Glatfelter Co. and WTM I Co., Civil Action No. 03-C-0949 (E.D. Wis.) was lodged with the United States District Court for the Eastern District of Wisconsin. The Amended Consent Decree concerns polychlorinated biphenyl ("PCB") contamination in a particular area of the Lower Fox River and Green Bay Site, known as Operable Unit 1 (Little Lake Butte des Morts). The original Consent Decree in this matter required the Defendants to implement the cleanup remedy for Operable Unit 1 that was selected in a December 2002 Record of Decision issued jointly by the U.S. Environmental Protection Agency ("EPA") and the Wisconsin Department of Natural Resources ("WDNR"). That Decree provided that the Defendants would pay for performance of that work using a specially-dedicated \$60 million fund established by the potentially-responsible parties, plus interest earned on the money placed in that fund. In light of that limited funding commitment, the Decree included corresponding "cost reopener" provisions that allowed termination of the Decree (with reservations of rights) if the actual costs of the work exceeded that funding commitment. The Amended Consent Decree would eliminate the "cost reopener" provisions of the original Decree and it would require the Defendants to complete the Operable Unit 1 cleanup without any pre-defined funding limitation. The Amended Decree also would accommodate adjustments to the Operable Unit 1 remedy that are reflected in a Record of Decision Amendment that EPA and WDNR issued on June 12, 2008. The work under the original Decree and the proposed Amended Decree currently is estimated to cost approximately \$102 million. Like the original Decree, the Amended Decree would not resolve the Defendants' liability for additional cleanup work that will be required elsewhere at the Site. The Department of Justice will receive comments relating to the Amended Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and mailed either electronically to [pubcomment-ees.enrd@usdoj.gov](mailto:pubcomment-ees.enrd@usdoj.gov) or in hard copy to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611. Comments should refer to United States and the State of Wisconsin v. P.H. Glatfelter Co. and WTM I Co., Civil Action No. 03-C-0949 (E.D. Wis.) and D.J. Ref. No. 90-11-2-1045/2. The Amended Consent Decree may be examined at: (1) The offices of the United States Attorney, 517 E. Wisconsin Avenue, Room 530, Milwaukee, Wisconsin; and (2) the offices of the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 14th Floor, Chicago, Illinois. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: [http://www.usdoj.gov/enrd/Consent\\_Decrees.html](http://www.usdoj.gov/enrd/Consent_Decrees.html). A copy of the Consent Decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$49.25 (197 pages at 25 cents per page reproduction cost) payable to the U.S. Treasury. For a copy of the Consent Decree alone, without appendices, please enclose a check in the amount of \$26.25 (105 pages at 25 cents per page reproduction cost) payable to the U.S. Treasury. William D. Brighton, Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources

Division.[FR Doc. E8-14725 Filed 6-27-08; 8:45 am]BILLING CODE 4410-15-P

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(<http://autos.aol.com/used?ncid=aolaut00050000000007>)



### **CERTIFICATE OF SERVICE**

Pursuant to Paragraph 112 of the proposed Amended Consent Decree in this case, I hereby certify that copies of the foregoing Unopposed Motion to Enter Amended Consent Decree (and the accompanying proposed Order Entering Amended Consent Decree) were served on this date by the Court's electronic case filing system and by first-class mail, postage prepaid, upon the following individuals:

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Dated: August 5, 2008

s/ Randall M. Stone